Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

No. _____

PLATO L. SMITH, PETITIONER

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY; JOSEPH E. TAYLOR; JAMES M. THOMAS, JR.; LUTHER C. WILLIAMS; AND LOCAL 689, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR A WRIT

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August 23, 1994

QUESTIONS PRESENTED

1. Whether the Petitioner was denied his constitutional rights by the District Court and U.S. Court of Appeals when they did not give the required full faith and credit to an expungement order issued by the Superior Court of the District of Columbia.

2. Whether Petitioner Smith was deprived of his constitutional right to a jury trial.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The petitioner Plato L. Smith respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia entered in this proceeding on December 21,

1993.

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia is not reported and appears in the Appendix hereto. No written opinion was rendered by the United States District Court for the District of Columbia. The District Court's rulings were issued from the bench and are set forth in the transcript that appears in the Appendix.

JURISDICTION

The judgment of the District of Columbia Court of Appeals was filed on December 21, 1993 and a timely petition for rehearing and rehearing en banc was denied on May 25, 1994. This petition for certiorari was filed within 90 days of the denial of the Petition for Rehearing and Rehearing En Banc. This Court's

jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Article IV

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried to jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

STATEMENT OF THE CASE

This case involves an employment discrimination action by Plato Smith who is seeking damages and reinstatement to his long-term employment with the Washington Metropolitan Area Transit Authority (WMATA). This action is against WMATA and Smith's union, Local 689 of the Amalgamated Transit Union and officials of both WMATA and Local 689. This action was originally filed by Smith in the local court (Superior Court) of the District of Columbia. The case was removed to the U.S. District Court for the District of Columbia by Respondents. Prior to the completion of discovery by Smith, the District Court dismissed and granted summary judgment against Smith in favor of all Respondents. Although Smith had requested a jury trial, the District

Court, while sitting without a jury, made findings of fact, made credibility determinations, weighed the evidence and refused to give full faith and credit to both an expungement statute of the District of Columbia and an Expungement Order of the Superior Court of the District of Columbia before dismissing this action as to all Respondents.

Smith was employed with WMATA as a Bus Operator from June 1970, until he injured his back at work on July 16, 1986. He was off work on worker's compensation from July 1986 until August 1988. On August 21, 1988, Smith returned to work at WMATA on light duty as a Rail Station Attendant. Smith was a member of the Amalgamated Transit Union, National Capitol Local Union 689.

After Smith applied for worker's

compensation benefits, WMATA engaged in continuing acts of retaliation and discrimination against him because of his race and protected activities. On January 21, 1989, Smith was a suspect in an encounter with the criminal justice system. On January 26, 1989, Smith was informed by an agent of WMATA that his long-term employment with WMATA was terminated because of his encounter with the criminal justice system. When Smith sought assistance from Local 689 to be reinstated to his employment with WMATA, Local 689 and its President and Business Agent, Defendant James M. Thomas, Jr., conspired with WMATA and its officials to prevent Smith's reinstatement to employment with WMATA.

When Smith's encounter with the criminal justice system was heard in the

Superior Court of the District of Columbia, it was concluded without any adjudication of guilt against him or any admission of guilt by him. In fact, the Superior Court of the District of Columbia issued an Order of Expungement to Smith concerning his encounter with the criminal justice system. However, WMATA refused to honor that Order of Expungement and refused to reinstate Smith to his employment with WMATA.

Smith filed suit against WMATA and Local 689 in the Superior Court of the District of Columbia on January 24, 1992. This action was removed by Respondents to the United States District Court for the District of Columbia. While the parties were in the process of discovery, Smith, in his deposition, denied having engaged in any criminal activity on January 21,

1989. That exchange is set forth below:

BY MR. TAYLOR:

Q I'm going to ask you whether you sold marijuana on the 21st of January.

A No, I did not.

Q Did you possess or see any marijuana that day?

A Did I possess or see? No, I did not.

Q Did you know that Mr. Ivey had any marijuana?

A No, I did not.

Id. However, prior to Smith's completion of his discovery against Respondents, a Motion for Protective Order and a Motion to Dismiss or for Summary Judgment was filed by Local 689. WMATA, as the institutional Defendant, did not file a dispositive motion.

Local 689's motions came before the U.S. District Court in a July 15, 1992 hearing. At the hearing, the District

Court made an arbitrary finding of fact that the reason Smith "lost his job was because he was distributing a controlled substance while on duty, and that was a sufficient ground, in and of itself, to terminate him and would, in my judgment represent a sufficient ground to deny him reinstatement." Then the District Court proceeded to throw Smith out of court by arbitrarily granting--whether filed or not--motions to dismiss or for summary judgment with prejudice. For example, WMATA had not filed a motion to dismiss or for summary judgment, but the Court dismissed WMATA sua sponte as follows:

> Mr. Heppen: Your Honor, Bruce Heppen on behalf of WMATA and on behalf of the individual--
>
> The Court: Would you come up to the lectern, please.
>
> Mr. Heppen: Certainly, sir. I would like to just point out to the Court that WMATA

> institutionally, as opposed to the individual Defendants Taylor and Williams, does not yet have a motion to dismiss or for summary judgment.
>
> The Court: That's what I understand. I am dismissing sua sponte.
>
> Mr. Heppen: Okay. I just would like to make clear that we didn't have one pending.
>
> The Court: I understand that.
>
> Mr. Heppen: Okay.
>
> The Court: Or you may at this point, if you wish, make an oral motion.
>
> Mr. Heppen: I would like to make an oral motion.
>
> The Court: All right. The motion is granted.
>
> Mr. Heppen: Thank you.

Smith was not allowed to complete discovery or to properly oppose the dismissal of WMATA before his case was arbitrarily dismissed with prejudice by the District Court in favor of Respondents.

REASONS FOR GRANTING THE WRIT

There is an absence of evidentiary support in the record for the District Court's finding that Smith distributed a controlled substance, i.e., marijuana while on duty working for WMATA. Smith has denied possession or distributing marijuana and it was improper as a matter of constitutional law for the District Court to consider the Order of Expungement or the Superior Court proceeding as an admission of guilt by Smith.

The District Court committed constitutional error when it failed to give full faith and credit to the Order of Expungement from the Superior Court of the District of Columbia and to the expungement statute passed by the Council of the District of Columbia and the Congress of the United States.

Because there were material disputes of material facts among the parties, particularly WMATA and Smith, the District Court wrongfully invaded the province of Smith's expected jury and committed constitutional and reversible error by granting summary judgment before the completion of discovery and in disregard of Smith's Rule 56(f) Affidavit. Smith's claims under 42 U.S.C. § 1983 were governed by the three year statute of limitations set forth in D.C. Code § 12-301(8). See, Greenfield v. District of Columbia, 623 F. Supp. 47 (D.D.C. 1985). The District Court deprived Smith of his constitutional right to a trial by jury when it disregarded the Order of Expungement from the Superior Court, improperly weighed the evidence of the case, made prejudicial credibility

determinations and made clearly erroneous fact finding on material issues of facts in dispute.

The Court of Appeals for the District of Columbia Circuit did not accord Petitioner's case the appropriate standard of review nor an opportunity to be heard on appeal as expected. The proper standard of review for the Court of Appeals in reviewing factual determination is "clearly erroneous" as set forth in the Federal Rules of Civil Procedure 52(a). See Icicle Seafoods, Inc. v. Worthington, 475 U.S. 709 (1986). It is well settled in the D.C. Circuit that "a finding is 'clearly erroneous' if it is without substantial evidentiary support or if it was induced by an erroneous application of the law." Case v. Morrisett, 475 F.2d 1300, 1307 (D.C. Cir. 1973) and Cuddy v.

Carmen, 762 F.2d 119, 123 (D.C. Cir. 1985). Moreover, the D.C. Circuit has held that "even if there is some evidence supporting a finding, that finding is clearly erroneous if 'on the entire evidence [the reviewing court] is left with the definite and firm conviction that a mistake has been committed.'" Id. (quoting United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948)).

Here, there is absolutely no evidentiary support for the District Court's finding that Smith was terminated because he was distributing a controlled substance while on duty. This is the material fact in dispute by the parties and should not have been decided by the District Court as a matter of law. During his deposition, Smith denied possessing or distributing marijuana while on duty. No

admissible evidence was presented to the District Court by Respondents to contradict or refute Smith's testimony. Therefore, it was clearly erroneous and unconstitutional for the District Court to find that Smith had distributed a controlled substance at work. Not even an appearance of justice can be attributed to the unfair manner that Smith was treated by both the District Court and the Court of Appeals below.

1. THE U.S. DISTRICT COURT AND THE U.S. COURT OF APPEALS DENIED PETITIONER HIS CONSTITUTIONAL RIGHTS TO A FAIR JUDICIAL PROCESS WHEN THEY DID NOT GIVE THE REQUIRED FULL FAITH AND CREDIT TO AN EXPUNGEMENT ORDER ISSUED BY THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

a. Standard of Review

When reviewing an issue of law, the

standard of review followed by the D.C. Circuit is de novo. Holtze v. Equitable Life Assurance Society, 548 F.2d 1037, 1042 (D.C. Cir. 1976) and Harbor Insurance Co. v. Omni Construction, Inc., 912 F.2d 1520, 1522 (D.C. Cir. 1990). However, when this case was before the D.C. Circuit, it not only was not given de novo review, but Smith was denied the opportunity to present oral argument in support of his case.

b. Full Faith and Credit

The United States Constitution provides that "Full Faith and Credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." U.S.

Const. Art. IV, § 1. Article IV, § 1 has been extended by statute to include the federal courts as well.[1] Moreover, absent an overriding federal interest,[2] federal courts must give full faith and credit to state courts' orders. Franklin Nat'l Bank v. Krakow, 295 F. Supp. 910, 915 (D.D.C. 1969).[3] Furthermore, the

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[1]See, 28 U.S.C.A. § 1738 (1966) which states as follows: "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto. . . . Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

[2]See Yacovone v. Bolger, 645 F.2d 1028, 1036 (D.C. Cir. 1981).

[3]Although the District of Columbia is not a state, full faith and credit has been extended to decisions of the courts of the District of Columbia. Washington

Supreme Court has ruled that res judicata (i.e., issue preclusiveness) applies to federal courts on issues originally decided in state court. Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 81 (1984)("[A] federal court must give to a state court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered."). The necessity of a full faith and credit clause is compelling. Otherwise, litigants could go from state to state and from state to federal venues to avoid judgments--thereby prohibiting the judicial system from having a mechanism by which final justice can be achieved.

Gas Light Co. v. Hsu, 478 F.Supp. 1262 (D.Md. 1979). In addition, 28 U.S.C. § 1738 makes the provisions of full faith and credit applicable to "Territories and Possessions" of the United States.

Here, the D.C. Circuit's and the District Court's failure to apply the constitutionally mandated full faith and credit principles to the present case have resulted in a judgment which is contrary to the intent, letter and spirit of a publicly declared law of the District of Columbia. In refusing to give effect to § 33-541(e)(2), the D.C. Circuit and the District Court exercised discretion which it did not have and have wrongfully acted as if they were a super-legislature for the District of Columbia. Furthermore, by using Smith's Order of Expungement as an admission which justifies his termination, the District Court has reinforced the stigma of Smith's prosecution which has been judicially eradicated by the expungement of Smith's record in the Superior Court of the District of

Columbia.

There was absolutely no showing of a federal interest which outweighed the mandatory application of § 33-541(e)(2) to the present case. Without the furtherance of an overriding federal interest, 28 U.S.C.A. § 1738 clearly expresses Congress' intent to have the District Court give full faith and credit to the judgment of the Superior Court of the District of Columbia. Therefore, the actions by the D.C. Circuit and the District Court to the contrary were erroneous and unconstitutional. It should be noted that this case was originally filed in the Superior Court of the District of Columbia and was removed to the District Court by Respondents. Respondents can not--and should not--defeat the legal effect of a state statute

and state court order--the legislature and courts of the District of Columbia--by simply removing to a U.S. District Court.

c. Expungement

To expunge means to physically destroy, erase, obliterate or to strike out wholly. See Blacks Law Dictionary, p. 693 (5th ed. 1979). In pertinent part, D.C. Code § 541(e) states:

> Section 541(e) probation is imposed 'without entering a judgment of conviction.' Upon completion of the probationary period, '[d]ischarge and dismissal under this subsection shall be without court adjudication of guilt, . . . [and] shall not be deemed a conviction for purposes of disqualification or disabilities imposed by law upon conviction of crime . . . or for any other purpose.'(emphasis added).

Twitty v. United States, 541 A.2d 612 (D.C. 1988). The policy behind a Section 541(e) expungement is to permit the court

to "function smoothly and effectively in the designated types of cases, and at the same time it preserves the anonymity of the parties and bars access to the records in such cases (which would disclose their identity) except by court order." O.J.M. v. United States, 554 A.2d 1149, 1151 (D.C. Ct. App. 1989).[4] Furthermore, this court has made it a priority to eliminate the social stigma involved in an arrest record[5] and to give an ex-offender a clean slate as he assimilates back into

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[4]In O.J.M v. United States, 554 A.2d 1149 (D.C. 1989), the appellant was tried in the Superior Court and placed on six months probation without judgment under section 541(e)(1). The appellant appealed, but before the appeal could be heard, the probation expired and the appellant moved that the trial and appeals' courts records be expunged. The court held that the records of the appeal could be expunged in the same manner as juvenile records. See id. at 1150.

[5]See United States v. Dionisio, 410 U.S. 1, 10 (1973).

society.[6] The effect given to the expungement statute in the District of Columbia has been to collect the court papers and place them in a sequestered, non-public file, accessable only to limited persons in limited circumstances. The computerized dockets are revised to prevent identification of the defendant and are only identified by number and the notation "Non-Public Record." See O.J.M., 554 A.2d at 1151. The total impact of the statute is demonstrated by the fact that under section 541(e)(2), once a record has been expunged, that person can testify that the event never occurred without penalty of perjury.[7]

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[6]See Doe v. Webster, 606 F.2d 1226 (D.C. Cir. 1979).

[7]In Twitty v. United States, 541 A.2d 612, 613 (D.C. Ct. App. 1988), the court held that "a witness may not be impeached with a prior guilty verdict, pursuant to

In this case, Smith's arrest and court proceedings concerned an alleged violation of D.C. Code Ann. § 33-541(d);[8] and pursuant to subsections (e)(1) and (e)(2) his records were subsequently discharged and an Order of Expungement was

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D.C. Code [s] 14-305(1981), 'unless and until there is a judgment of conviction premised on a sentence.'. . . [I]n s 541(e) cases where probation is successful, 'entry of judgment . . . will never eventuate.'" Id.

[8]D.C. Code Ann. § 33-541(d) states:

> It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

entered.[9] D.C. Code. Ann. § 33-541(e)(2)

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[9]D.C. Code Ann. § 33-541(e)(1) provides in relevant part:

> . . . If during the period of probation such person does not violate any conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him or her. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a non public record thereof shall be retained solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of

> disqualifications or disabilities imposed by law upon conviction of a crime . . . or for any other purpose.

D.C. Code Ann. § 33-541(e)(2) provides in relevant part:

> Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person may apply to the court for an order to expunge from all official records (. . .) all recordation relating to his or her arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this subsection. . . . The effect of such order shall be to restore such person, in the contemplation of this law, to the status he or she occupied before such arrest or indictment or information.

explicitly provides that "[t]he effect of such [expungement] order shall be to restore such person, in the contemplation of this law, to the status he or she occupied *before* such arrest or indictment or information." (emphasis added). In the present case, the language of § 33-541(e)(2) gives instruction as to the effect that expungement of one's criminal record should have. By placing a person in the position he or she occupied before any arrest, the statute would effectively eliminate any findings of wrongdoing on the part of the person whose record has been expunged. Since it is a tenable position to assert that the intent of § 33-541 is to give a person a fresh start, then the District Court's findings and conclusion clearly run contrary to the spirit and language of the statute. The

District Court was clearly erroneous in its finding and should be reversed.

2. SMITH WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO A JURY TRIAL

In this action, Smith had properly demanded a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure. However, the District Court, sitting without a jury, before the completion of discovery and in disregard of Smith's 56(f) Affidavit, unfairly and erroneously decided a factual dispute based on a mistaken view of the evidence presented by Smith. If this error is not corrected, Smith will suffer a denial of his constitutional right to fundamental fairness and to have his case decided by a jury. In Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986), the Supreme Court made it clear that "it did not mean

by its holding to authorize 'trial by affidavits.'" Here, the District Court, sitting without a jury, without ever observing Smith testify and in disregard of an Order of Expungement issued by the Superior Court, has improperly weighed the evidence in this case and has unconstitutionally invaded the province of the jury by granting Respondents' motions to dismiss and for summary judgment. Id. ("Credibility determinations, the weighing of the evidence, the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . ."). Id.

Smith maintains that because there were issues of material facts in this case, and evidence from which a jury could reasonably return a verdict in his favor, the D.C. Circuit and the District Court

committed reversible and constitutional error in deciding the factual dispute concerning Respondents' liability. The District Court's error on this point was harmful and deprived Smith of his Constitutional right to trial by jury when it granted WMATA's motion for summary judgment sua sponte. See Rule 38, Fed. R. Civ. P. Equally as wrong, the D.C. Circuit erred when it also sua sponte denied Smith an opportunity to present oral argument in support of his case on appeal. Thus, Smith was not given a full and fair opportunity to file an opposition to the sua sponte motion for summary judgment entered by the District Court nor was Smith given a full and fair opportunity to be heard on appeal.

This above point is significant because the D.C. Circuit is on record as

viewing a summary judgment determination as an issue of law rather than fact and, thus assert that it will consider the matter de novo on review. Beatty v. Washington Metropolitan Area Transit Authority, 860 F.2d 1117, 1119-20 (D.C. Cir. 1988) and Parmac, Inc. v. I.A.M. Nat'l Pension Fund Benefit Plan A, 872 F.2d 1069, 1071 (D.C. Cir. 1989). The standard for granting a motion for summary judgment is set forth in Rule 56(c) of the Federal Rules of Civil Procedure, i.e., it must be shown "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Doe v. United States Dept. of Justice, 753 F.2d 1092, 1095 n.1 (D.C. Cir. 1985). The lower courts erred when it granted Respondents' motion for summary judgment without abiding by the

established standard for granting summary judgment. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970); Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505 (1986); Celotex Corp. v. Catrett, 106 S.Ct. 2548 (1986); and Jarrell v. United States Postal Service, 753 F.2d 1088, 1092 (D.C. Cir. 1985). Respondents have failed to carry their burden of showing the absence of a genuine issue as to any material fact. Id. See also, Williams v. Washington Metropolitan Area Transit Authority, 721 F.2d 1412, 1414 (D.C. Cir. 1983) and Abraham v. Graphic Arts International Union, 660 F.2d 811, 184 (D.C. Cir. 1981).

Fairness, not excessive technicality, is the guiding principle under the Federal Rules of Civil Procedure. Gordon v. Nat'l Youth Work

Alliance, 675 F.2d 356, 360 (D.C. Cir. 1982). Accordingly, in order to grant a motion for summary judgment, the Court must find "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). This the District Court has not--and cannot--do. Smith has committed no wrong nor crime that would warrant the termination of his employment. Contrary to the D.C. Circuit's ruling, this point is more than a showing of "some metaphysical doubt as to the material facts" in this case. Cf. Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). There are mega-facts in dispute, i.e., whether Smith was terminated because of his race and protected activitiey and

whether Smith committed a wrong or crime that warratned his termination. In addition, this point is relevant to Smith's full faith and credit challenge to the District Court's action because the District Court did not allow Smith to complete reasonable discovery on the issue of discrimination. The federal courts were not fair in their handling of this matter involving the constitutional rights and expectations of Smith.

Nevertheless, the District Court ruled that there was "no evidence whatsoever of a conspiracy of any description anywhere based upon Mr. Smith's race or based upon the fact of his having filed an application for worker's compensation". As a result, it granted summary judgment on Respondents' behalf; specifically finding there was no credible

evidence to create a genuine issue of fact. This ruling is erroneous, unconstitutional and establishes a dangerous precedent in its application. This is because Smith was not allowed a full and fair opportunity to complete discovery before summary judgment was abruptly granted in Respondents' favor. It also should be noted that Smith filed a Rule 56(f) affidavit with the District Court prior to it granting summary judgment in the Union's favor but it was ignored.

In addition to its finding that there was no evidence of a conspiracy, the District Court ruled that the expiration of the statute of limitations was an additional ground for the dismissal of the complaint. This erroneous District Court ruling was ignored by the D.C. Circuit.

This ruling is erroneous because it is based on Respondents' false assertion that Smith's suit is one for violation of the union's duty of fair representation.[10] Smith has neither alleged nor implied that his claim arises from any violation of the union's duty of fair representation. On the contrary, Smith's claim is grounded upon violations of his rights under 42 U.S.C. § 1983.

In the District of Columbia, § 1983

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[10]Respondents' have asserted that Mr. Smith's cause of action against the Union must be brought within six (6) months of the date it accrues. See, Motion of Defendants Local 689, Amalgamated Transit Union and James M. Thomas, Jr. to Dismiss or for Summary Judgment at 3 (citing Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983)). Petitioner vigorously denied this fact below. Assuming arguendo, that Smith's claim against the Union was barred by a six month statute of limitations, it was clearly erroneous and an abuse of discretion for the District Court to have dismissed WMATA sua sponte.

actions may be brought within three (3) years of the harm giving rise to the cause of action. D.C. Code Ann. § 12-301(8) (1989). The Supreme Court has held that § 1983 actions are governed by the state statutes of limitations for personal injury suits. Wilson v. Garcia, 471 U.S. 261 (1985). The applicable statute of limitations for personal injury in the District of Columbia is contained in D.C. Code Ann. § 12-301(8). See, Greenfield v. District of Columbia, 623 F. Supp. 47 (D.C. 1985); see also, Gordon, 675 F.2d at 358 n.1. Section 12-301(8) provides as follows:

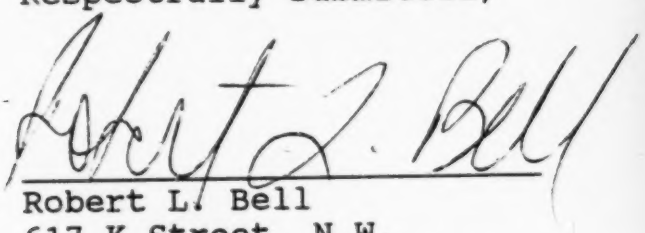
> Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain accrues: . . . (8) for which a limitation is not otherwise specially prescribed--3 years.

Smith's claims in the District Court were filed in the Superior Court of the District of Columbia on January 24, 1992. The events which gave rise to Smith's Complaint below arose when he was wrongfully terminated from his employment with WMATA on January 26, 1989. The Complaint alleging § 1983 violations was brought within three (3) years after the harm giving rise to the cause of action. Therefore, the District Court erred as a matter of law in ruling that the statute of limitations was also applicable as grounds for dismissal of Smith's Complaint against WMATA. It was arbitrary action and unfair for the D. C. Circuit to have ignored this blatant error by the District Court.

CONCLUSION

Based on the foregoing, it is respectfully submitted that a writ of certiorari should be issued to review the judgment and opinions of the District of Columbia Circuit and the District Court.

Respectfully submitted,



Robert L. Bell
617 K Street, N.W.
Washington, D.C. 20001
(202) 842-4066

Counsel for Petitioner
PLATO L. SMITH

A P P E N D I X

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 92-7149 **September Term, 1993**
USDC CV 92-0419

Plato L. Smith,

Appellant

v.

Washington Metropolitan Area Transit Authority, et al.,

Appellee

United States Court of Appeals For the District of Columbia Circuit

FILED MAY 25 1994
RON GARVIN
CLERK

BEFORE: D. H. Ginsburg and Randolph, Circuit Judges and Hubert L. Will*, Senior District Judge

O R D E R

Upon consideration of appellant's petition for rehearing, filed January 4, 1994, it is

ORDERED, by the Court, that the petition is denied.

*of the United States District Court for the Northern District of Illinois, sitting by designation pursuant to 28 U.S.C. § 294(d).

Per Curiam
FOR THE COURT:
RON GARVIN, CLERK

BY: /s/ Robert A. Bonner

Robert A. Bonner
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 92-7149 **September Term, 1993**
USDC CV 92-0419

Plato L. Smith,

Appellant

v.

Washington Metropolitan Area Transit Authority, et al.,

Appellee

United States Court of Appeals For the Distri of Columbia Circuit

FILED MAY 25 1994
RON GARVIN
CLERK

BEFORE: Mikva, Chief Judge; Wald, Edwards, Silberman, Buckley, Williams, Ginsburg, Sentelle, Henderson, and Randolph, Circuit Judges and Hubert L. Will*, Senior District Judge

O R D E R

Appellant's Suggestion For Rehearing In Banc has been circulated to the full Court. No member of the Court requested

*of the United States District Court for the Northern District of Illinois, sitting by designation pursuant to 28 U.S.C. § 294(d).

the taking of a vote thereon. Upon consideration of the foregoing it is

ORDERED, by the Court *in banc*, that the suggestion is denied.

Per Curiam
FOR THE COURT:
RON GARVIN, CLERK

BY: /s/ Robert A. Bonner

Robert A. Bonner
Deputy Clerk

United States Court Of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 92-7149 September Term, 1993
92-cv00419

United States Court of Appeals For the District of Columbia Circuit

Plato Smith,
Appellant

FILED DEC 21 1993
RON GARVIN
CLERK

v.

Washington Metropolitan Area Transit Authority, et. al,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Before: GINSBURG and RANDOLPH, Circuit Judges, and WILL, Senior District Judge*

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs of counsel. The court is

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*Honorable Hubert L. Will, United States District Court for the Northern District of Illinois, sitting by designation pursuant to 28 U.S.C. § 294(d) (1988).

satisfied, after reviewing the parties' brief, that appropriate disposition of the case does not call for further opinion. See D.C. Cir. R. 14(c).

Smith challenges the district court's summary ruling that Smith had failed to raise a genuine issue of material fact to support his claims of racial discrimination and retaliatory discharge. Our review of the record and of Smith's briefs reveals no evidence that suffices to raise such an issue of material fact. See, *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Crop.*, 475 U.S. 574, 586 (1986) (In response to summary judgment motion nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts"). Smith's full faith and credit challenge to the district judge's ruling

has no relevance to the legal question whether Smith presented evidence of discrimination sufficient to withstand summary judgment. Because Smith failed to do just that, this court need not reach the merits of the district court's alternative ruling that the six-month statute of limitations for a hybrid breach of duty of fair representation/breach of contract claim rendered Smith's complaint untimely. Therefore, it is

ORDERED and ADJUDGED that the ruling from which this appeal has been taken be affirmed.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any untimely petition for rehearing. See D.C. Cir. R. 15(b)(2).

Per Curiam
FOR THE COURT

/s/ Ron Garvin
Ron Garvin, Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 92-7149 **September Term, 1993**

United States Court of Appeal For the District of Columbia Circuit

Plato Smith,
Appellant

v.

FILED DEC 09 1993
RON GARVIN
CLERK

Washington Metropolitan Area Transit Authority, et al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Before: GINSBURG and RANDOLPH, Circuit Judges, and WILL, Senior District Judge*

O R D E R

Upon consideration of the briefs and all of the pleadings and proceedings had herein, and it appearing that the above case falls within the intent and purpose

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*Honorable Hubert L. Will, United States District Court for the Northern District of Illinois, sitting in designation pursuant to 28 U.S.C. § 294(d) (1988).

of Rule 13(i) of the General Rules of this Court and also meets one or more of the criteria set forth in that Rule, it is

ORDERED, by the Court, that the above case presently scheduled for December 13, 1993, will be considered and decided without oral argument.

Per Curiam
For the Court:
RON GARVIN, CLERK

/s/ Cheri Carter

By: Cheri Carter
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PLATO SMITH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 92-419
	)	
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, et al.,	)	FILED JUL 15 1992
	)	
	)	Clerk, U.S. District Court, District of Columbia
Defendants.	)	

ORDER

In accordance with the proceedings in open court at the status conference and motions hearing of July 15, 1992, and the entire record herein, it is, this 15th day of July, 1992,

ORDERED, that this action is dismissed with prejudice.

/s/
Thomas Penfield Jackson
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PLATO L. SMITH, PLAINTIFF,	:	
vs.	:	C.A. NO. 92-419
WMATA, ET AL. DEFENDANT,	:	

WASHINGTON, D.C.
JULY 15, 1992

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS P. JACKSON

FOR THE PLAINTIFF: ROBERT BELL, ESQ.

FOR THE DEFENDANT: DOUGLAS TAYLOR, ESQ.
BRUCE HEPPEN, ESQ.

COURT REPORTER: PHYLLIS MERANA
6816 U. S. COURTHOUSE
3RD & CONSTITUTION AVE, N.W.
WASHINGTON, D C. 20001

P-R-O-C-E-E-D-I-N-G-S

THE DEPUTY CLERK: CIVIL ACTION 92-419, SMITH VERSUS WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY.

MR. BELL FOR THE PLAINTIFF.

MR. HEPPEN AND MR. TAYLOR FOR THE DEFENDANT.

THE COURT: ALL RIGHT, GENTLEMEN. I HAVE HAD AN OPPORTUNITY TO REVIEW ALL THE VARIOUS MATTERS THAT ARE PENDING. I BELIEVE THERE ARE SEVEN MOTIONS, ALL OF WHICH ARE RIPE AND IN A POSTURE TO BE RULED UPON.

MR. BELL, DO YOU WISH TO BE HEARD FURTHER ON ANY OF THESE MOTIONS?

MR. BELL: OTHER THAN THE RESPONSES I HAVE ALREADY GIVEN, I WOULD ASK THE COURT, CONCERNING THE MOTION FOR THE DEPOSITION THAT'S SCHEDULED FOR FRIDAY, THAT WE BE

PERMITTED TO GO FORWARD WITH THE DEPOSITION.

THE COURT: ALL RIGHT.

DO THE DEFENDANTS WISH TO BE HEARD FURTHER?

MR. TAYLOR: NO, YOUR HONOR.

THE COURT ALL RIGHT.

MR. TAYLOR: I THINK OUR PLEADINGS ARE ADEQUATE. WE DO NEED GUIDANCE ON THE DEPOSITION, AS MR. BELL INDICATED.

THE COURT: YOU WILL GET IT.

THE PLAINTIFF'S MOTION TO AMEND THE SUPERIOR COURT COMPLAINT IS GRANTED.

DEFENDANT WMATA, TAYLOR AND WILLIAMS' MOTION TO AMEND THE ANSWER IS SIMILARLY GRANTED.

DEFENDANT LOCAL 689 AND THOMAS' SUPPLEMENTARY ANSWER, WHICH I AM TREATING AS A MOTION FOR LEAVE TO AMEND THEIR ANSWER, IS GRANTED.

THE MOTION OF DEFENDANTS TAYLOR AND WILLIAMS TO DISMISS IS GRANTED FOR THE REASONS ADVANCED, NAMELY, SECTION 80 OF THE COMPACT, WHICH PROVIDES THAT EXCLUSIVE LIABILITY FOR COMPLAINTS OF THIS NATURE RESTS WITH THE ENTERPRISE DEFENDANT, WMATA.

NOW, I DO HAVE SOME QUESTIONS I WANT TO ASK YOU, MR. BELL, ABOUT THE MOTION FOR SUMMARY JUDGMENT.

MR. BELL: YES, YOUR HONOR.

THE COURT: AT NO POINT DO I SEE THAT THERE IS ANY DENIAL BY YOUR CLIENT OF THE ACCUSATION THAT ON JANUARY 21ST, 1989, HE WAS, IN FACT, IN POSSESSION OF AND MAKING DISTRIBUTION OF A CONTROLLED SUBSTANCE. DOES HE DENY THAT?

MR. BELL: YES, YOUR HONOR.

THE COURT: WHERE DOES HE DENY IT, IN ALL OF THE PAPERS THAT I HAVE BEFORE ME?

MR. BELL: YOUR HONOR, WE HAVE REPEATEDLY CITED THROUGHOUT THESE PROCEEDINGS THAT THERE WAS AN ORDER OF EXPUNGEMENT ADDRESSING THAT ISSUE.

THE COURT: AN ORDER OF EXPUNGEMENT SIMPLY DEALS WITH HIS CRIMINAL LIABILITY. IT DOES NOT RELIEVE HIM OF HIS RESPONSIBILITY TO HAVE CONFORMED TO THE RULES OF HIS EMPLOYER.

MR. BELL: YOUR HONOR, WITH RESPECT TO THE COURT ORDER THAT WAS ENTERED IN THIS MATTER. IT WAS ENTERED PURSUANT TO D.C. CODE 33-541(E)(2) -- (E)(1) AND (2). I DO HAVE A COPY FOR THE COURT.

THE COURT: TELL ME WHAT IT SAYS.

MR. BELL: IT SPECIFICALLY ADDRESSES THAT AN ORDER OF EXPUNGEMENT RESTORES AN INDIVIDUAL TO THE STATUS THAT HE OCCUPIED BEFORE ARREST OR INDICTMENT AND THAT NO PERSON TO WHOM SUCH ORDER HAS BEEN ENTERED

SHALL BE HELD THEREAFTER UNDER ANY PROVISION OF ANY LAW TO BE GUILTY OF PERJURY OR OTHERWISE GIVING A FALSE STATEMENT BY REASON OR FAILURE TO RECITE OR ACKNOWLEDGE SUCH ARREST, INDICTMENT OR TRIAL IN RESPONSE TO ANY INQUIRY MADE OF HIM OR HER FOR ANY PURPOSE.

THE COURT: NOBODY IS CHARGING HIM WITH PERJURY IN THIS CASE.

MR. BELL: RIGHT. WITH RESPECT TO THIS LITIGATION, YOUR HONOR, HE HAS BEEN RESTORED TO THE STATUS THAT HE OCCUPIED BEFORE THE ARREST.

THE COURT: NOT INSOFAR AS HIS EMPLOYER IS CONCERNED. HE WAS DISTRIBUTING A CONTROLLED SUBSTANCE WHILE ON DUTY.

MR. BELL: YOUR HONOR, IN THE DEPOSITION OF MR. SMITH, HE SPECIFICALLY DENIED THAT ALLEGATION -- IN HIS

DEPOSITION TAKEN UNDER OATH BY THE DEFENDANTS IN THIS MATTER.

THE COURT: I HAVEN'T SEEN IT. IT HASN'T BEEN PRESENTED TO ME. AND I AM GOING TO TREAT THE PLEA OF GUILTY AS THE EQUIVALENT TO AN ADMISSION OF GUILT. AND ON THAT BASIS, I AM GOING TO CONCLUDE THAT THERE IS ABSOLUTELY NO BASIS TO CONCLUDE THAT THE REASON GIVEN FOR HIS DISCHARGE FROM EMPLOYMENT BY WMATA WAS OTHER THAN THAT STATED.

THERE IS FURTHER, IN THIS RECORD NO EVIDENCE WHATSOEVER OF A CONSPIRACY OF ANY DESCRIPTION ANYWHERE BASED UPON MR. SMITH'S RACE OR BASED UPON THE FACT OF HIS HAVING FILED AN APPLICATION FOR WORKERS' COMPENSATION.

THERE ARE ONLY HIS UNSUBSTANTIATED ASSERTIONS OF BELIEF THAT FOR SOME REASON HE WAS TREATED AS HE WAS BECAUSE OF HIS

RACE. IT IS NOT SUBSTANTIATED ANYWHERE IN THIS RECORD, AND I AM NOT GOING TO LET YOU PURSUE THIS CASE FURTHER AT CONSIDERABLE EXPENSE AND CONSIDERABLE INCONVENIENCE TO THESE DEFENDANTS, BASED UPON THE EVIDENCE THAT I HAVE GOT HERE, WHICH SUGGESTS THAT THERE IS NO CONSPIRACY WHATSOEVER THAT YOUR GOING TO BE ABLE TO PROVE, NO MATTER HOW MUCH DISCOVERY YOU TAKE.

MR. BELL: YOUR HONOR, IF I MAY BE HEARD ON THOSE TWO ISSUES. ON THE ISSUE OF THE AFFIDAVIT AND THE DEPOSITION OF MR. SMITH, I DO HAVE THE DEPOSITION WITH ME. I WILL TENDER IT TO THE COURT TO DIRECT THE COURT'S ATTENTION TO THE EXPRESS DENIAL BY MR. SMITH OF SUCH ALLEGATION THAT HE DISTRIBUTED DRUGS ON JANUARY 21ST, 1989.

THE COURT: ALL RIGHT. I WILL ACCEPT YOU ASSERTION. I DON'T FIND IT

SUFFICIENTLY CREDIBLE TO CREATE A GENUINE ISSUE OF FACT HERE, GIVEN THE PLEA OF GUILTY THAT HE ENTERED AND HIS FAILURE TO FILE A GRIEVANCE.

MR. BELL: YOUR HONOR, WITH RESPECT TO THE DOCUMENTS THAT I FILED IN OPPOSITION TO THIS FAILURE TO FILE A GRIEVANCE, I EXPRESSLY SET FORTH AFFIDAVITS FROM INDIVIDUALS IN THE UNION WHO EXPRESSLY INDICATED THAT MR. SMITH DID COME INTO THE UNION HALL, AND MR. SMITH EXPRESSLY STATED IN HIS DEPOSITION, AND IN AFFIDAVITS THAT I HAVE BEEN FILING IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT, THAT HE DID DO ALL THAT HE COULD TO FILE A GRIEVANCE WITH THE UNION. THE UNION REFUSED TO ACCEPT THE GRIEVANCE. THE UNION TOLD HIM TO GO THE POLITICAL ROUTE.

THOSE ARE DOCUMENTS THAT ARE IN THE RECORD. THOSE ARE IN AN AFFIDAVIT FROM THE UNION ITSELF, YOUR HONOR, SAYING THAT HE CAME INTO THE UNION OFFICE.

WE HAVE AFFIDAVITS FROM THE UNION PRESIDENT SAYING THAT THOSE THINGS THAT DID NOT OCCUR, AND WE HAVE AN AFFIDAVIT FROM ANOTHER PERSON IN THE UNION SAYING THAT THE PLAINTIFF DID COME IN AS EARLY AS FEBRUARY, 1989. SO THERE IS A DISPUTE.

THE COURT: THERE IS AN AFFIDAVIT IN THE RECORD WHICH SUGGESTS THAT HE DID ASK FOR ADVICE. HE WAS ASKED IF HE SHOULD FILE A GRIEVANCE. HE WAS TOLD, ACCORDING TO MR. JACKSON, THAT HE COULD FILE A GRIEVANCE, BUT IT DIDN'T APPEAR TO MR. JACKSON TO BE THE MORE LIKELY AVENUE BY WHICH HE WOULD OBTAIN THE REINSTATEMENT HE WAS SEEKING, AND SUGGESTED THAT HE PURSUE A POLITICAL ROUTE.

NOBODY TOLD HIM, AS FAR AS I CAN TELL FROM THIS RECORD, THAT HE HAD NO RIGHT TO FILE A GRIEVANCE AND HE CLEARLY DID NOT FILE A GRIEVANCE.

MR. BELL: THAT IS A DISPUTED MATERIAL FACT THAT I THINK GIVES RISE TO A JURY QUESTION.

THE COURT: I DON'T BELIEVE SO.

MR. BELL: IN HIS AFFIDAVIT HE DISPUTES WHAT IS SET FORTH IN THE AFFIDAVIT OF MR. JACKSON, AND IN THE AFFIDAVIT OF THE PLAINTIFF, HE DISPUTES WHAT IS SET FORTH IN THE AFFIDAVIT OF MR. THOMAS.

THOSE ARE DISPUTES OF MATERIAL FACTS. THOSE ARE QUESTIONS THAT GO TO CREDIBILITY. AND THOSE CREDIBILITY DETERMINATIONS, YOUR HONOR, ARE JURY DETERMINATIONS.

WE THINK THIS RECORD, AS IT CURRENTLY STANDS AGAINST THE UNION, DOES SHOW THAT THE UNION HAS GIVEN IN ITS PLEADINGS THUS FAR AND ITS DOCUMENTS AND PAPERS FILED THUS FAR AN INCONSISTENT STATEMENT AS TO WHAT OCCURRED AND MR. SMITH'S EFFORTS TO RETAIN HIS EMPLOYMENT.

THEY SPECIFICALLY TOLD HIM, YOU KNOW, IF YOU LOOK AT THE AFFIDAVIT OF MR. JACKSON, TO GO THE POLITICAL ROUTE FIRST. "WAIT UNTIL AFTER THE CRIMINAL MATTER IS DEALT WITH." HE FOLLOWED WHATEVER WAS TOLD TO HIM WHEN HE WENT IN TO FILE THE GRIEVANCE.

THE QUESTION AS TO WHETHER OR NOT THEY GAVE HIM THE BEST ADVICE AND WHETHER OR NOT THEY ARE SAYING WHAT THEY ARE SAYING NOW IN PRETEXT -- YOUR HONOR, THOSE ARE CREDIBILITY DETERMINATIONS. THOSE ARE JURY QUESTIONS AND THOSE ARE THINGS THAT

WOULD MAKE THIS INAPPLICABLE FOR A DETERMINATION BY SUMMARY JUDGMENT AT THIS POINT IN TIME.

THE COURT: I DON'T FIND THOSE ALLEGATIONS OR CHARACTERIZATIONS OF YOUR CLIENT'S ALLEGATIONS AS BEING SUFFICIENT TO CREATE AN ISSUE OF FACT HERE.

MR. BELL: THAT'S A CREDIBILITY DETERMINATION ON BEHALF OF MY CLIENT?

THE COURT: I DON'T BELIEVE SO. I THINK THE ALLEGATIONS AND THE ASSERTIONS AS TO ALLEGATIONS ARE SO COUCHED AS TO CREATE THE ILLUSION OF AN ISSUE OF FACT WHEN, IN FACT, THERE IS NO ISSUE OF FACT HERE.

MR. BELL: YOUR HONOR, MY CLIENT HAS TESTIFIED UNDER OATH. MY CLIENT'S STATEMENTS AND ASSERTIONS ARE ALL UNDER OATH. WE HAVE FOLLOWED WHAT THE SUPREME COURT SAID ONE MUST DO WHEN YOU ARE

CONFRONTED WITH A SUMMARY JUDGMENT MOTION AND A CREDIBILITY DETERMINATION HAS TO BE MADE.

THE COURT: MR. BELL, YOU CAN TAKE IT UP AND SEE WHETHER OR NOT THE COURT OF APPEALS AGREES THAT YOU HAVE CREATED A GENUINE ISSUE OF MATERIAL FACT HERE.

I WILL STATE, HOWEVER, FOR THE RECORD, FOR PURPOSES OF REVIEW ON APPEAL, THAT THE ADDITIONAL GROUND ASSERTED BY THE UNION AND MR. THOMAS FOR DISMISSAL, NAMELY THE EXPIRATION OF THE STATUTE OF LIMITATIONS, I SIMILARLY FIND MERITORIOUS AND ASSERT THAT AS AN ADDITIONAL GROUND FOR THE DISMISSAL OF THIS COMPLAINT.

AT THIS STAGE, MR. BELL, I AM GOING TO GRANT THE MOTION TO DISMISS THE CASE IN ITS ENTIRETY. AND I AM GOING TO DENY SIMULTANEOUSLY, WITHOUT PREJUDICE, THE DEFENDANT'S UNION AND MR. THOMAS' MOTION

FOR RULE 11 SANCTIONS. AND I WOULD LIKE YOU TO HAVE YOU AND MR. SMITH REFLECT ON WHETHER OR NOT YOU WISH TO PURSUE THIS ACTION.

MR. BELL: YOUR HONOR, MR. SMITH IS ONLY ASKING TO HAVE HIS JOB BACK. MR. SMITH IS NOT PURSUING A FRIVOLOUS ACTION. MR. SMITH IS NOT SAYING ANYTHING IN THIS LITIGATION, YOUR HONOR, THAT HE IS NOT WILLING TO SAY UNDER OATH.

THE COURT: WHETHER OR NOT MR. SMITH IS TO GET HIS JOB BACK I THINK LIES IN THE DISCRETION OF WMATA, BUT I DO FIND AS SUFFICIENTLY ESTABLISHED BY THIS RECORD AND MAKE A FINDING OF FACT TO THE EFFECT THAT THE REASON HE LOST HIS JOB WAS BECAUSE HE WAS DISTRIBUTING A CONTROLLED SUBSTANCE WHILE ON DUTY, AND THAT WAS A SUFFICIENT GROUND, IN AND OF ITSELF, TO TERMINATE HIM AND WOULD, IN MY JUDGMENT,

REPRESENT A SUFFICIENT GROUND TO DENY HIM REINSTATEMENT.

MR. BELL: YOUR HONOR, MAY I ASK THE COURT, IS THE COURT REFUSING TO GIVE FULL FAITH AND CREDIT TO AN ORDER OF THE SUPERIOR COURT THAT HAS ADDRESSED THAT ISSUE AND MAKE THAT ISSUE RES JUDICATA AT THIS POINT IN TIME?

THE COURT: NO, I AM NO REFUSING TO GIVE FULL FAITH AND CREDIT TO AN ORDER OF THE SUPERIOR COURT.

AN ORDER OF EXPUNGEMENT DOES NOT OPERATE TO RELIEVE HIM OF THE CONSEQUENCES OF HIS CRIMINAL CONDUCT INSOFAR AS HIS STATUS AS AN EMPLOYEE OF WMATA IS CONCERNED.

MR. BELL: YOUR HONOR, WE SPECIFICALLY ADDRESSED THAT QUESTION IN EVERYTHING THAT HAS BEEN PUT FORTH BY ALL OF THE DEFENDANTS IN THIS CASE AND WITH

THE TESTIMONY OF MR. SMITH AT HIS DEPOSITION, IN ADDITION TO THE AFFIDAVITS THAT HAVE BEEN SET FORTH. AND WE'RE SPECIFICALLY RELYING UPON THE D.C. STATUTE, WHICH IS THE LAW THAT MYSELF, AS A LAWYER, MUST FOLLOW.

THE COURT: ALL RIGHT. YOU WILL HAVE AN OPPORTUNITY TO PRESENT THAT ARGUMENT TO THE COURT OF APPEALS.

THE MOTIONS TO DISMISS, ALL DEFENDANTS HAVING MADE MOTIONS TO DISMISS OR FOR SUMMARY JUDGMENT, IS GRANTED AND THIS CASE IS DISMISSED WITH PREJUDICE.

MR. BELL: IS THAT AGAINST ALL PARTIES, YOUR HONOR?

THE COURT: THAT'S AS TO ALL PARTIES.

MR. BELL: WMATA AND THE UNION:

THE COURT: I SEE NO EVIDENCE ON THIS RECORD WHATSOEVER TO SUGGEST THAT WMATA IN AND OF ITSELF -- AND THAT WOULD BE THE

ONLY DEFENDANT WHO HAS NOT MOVED TO DISMISS THE CASE -- POSSESSES ANY LIABILITY FOR ANY CONSPIRACY.

MR. HEPPEN: YOUR HONOR, BRUCE HEPPEN ON BEHALF OF WMATA AND ON BEHALF OF THE INDIVIDUAL --

THE COURT: WOULD YOU COME UP TO THE LECTERN, PLEASE.

MR. HEPPEN: CERTAINLY, SIR.

I WOULD LIKE TO JUST POINT OUT TO THE COURT THAT WMATA INSTITUTIONALLY, AS OPPOSED TO THE INDIVIDUAL DEFENDANTS TAYLOR AND WILLIAMS, DOES NOT YET HAVE A MOTION TO DISMISS OR FOR SUMMARY JUDGMENT.

THE COURT: THAT'S WHAT I UNDERSTAND. I AM DISMISSING SUA SPONTE.

MR. HEPPEN: OKAY. I JUST WANTED TO MAKE CLEAR THAT WE DIDN'T HAVE ONE PENDING.

THE COURT: I UNDERSTAND.

MR. HEPPEN: OKAY.

THE COURT. OR YOU MAY AT THIS POINT, IF YOU WISH, MAKE AN ORAL MOTION.

MR. HEPPEN: I WOULD LIKE TO MAKE AN ORAL MOTION.

THE COURT: ALL RIGHT. THE MOTION IS GRANTED.

MR. HEPPEN: THANK YOU.

THE COURT: BUT AS I PREVIOUSLY OBSERVED, AT THIS POINT I AM DENYING, WITHOUT PREJUDICE, THE APPLICATION OF THOSE DEFENDANTS HAVING SOUGHT RULE 11 SANCTIONS IN THE CASE.

MR. TAYLOR: ON THAT POINT, YOUR HONOR, AM I TO UNDERSTAND THAT HE MAY RENEW BEFORE THIS COURT?

WHAT IS YOUR INTENTION WITH REGARD --

THE COURT: I DON'T KNOW WHERE MR. BELL IS GOING TO GO WITH THIS CASE AT THIS STAGE. AT THE MOMENT, I DON'T HAVE ANY

MATTER PENDING BEFORE ME. I HAVE DENIED THAT MOTION. LET'S SEE WHAT OCCURS IN THE FUTURE.

MR. TAYLOR: I UNDERSTAND, YOUR HONOR. THANK YOU.

THE COURT: ALL RIGHT. THANK YOU, COUNSEL.

WE'LL STAND IN RECESS.

(WHEREUPON, THE ABOVE-ENTITLED MATTER WAS ADJOURNED.)

CERTIFICATE OF REPORTER

THIS RECORD IS CERTIFIED BY UNDERSIGNED REPORTER TO BE THE OFFICIAL TRANSCRIPT OF THE PROCEEDINGS INDICATED.

/s/ Phyllis Merana

PHYLLIS MERANA

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA

vs. Case No. M 650-89
PDID No. 418253

PLATO L. SMITH

* * * *

ORDER OF EXPUNGEMENT

The Court, having found that the defendant is qualified under D.C. Code 1981, § 33-541(e)(2), for expungement, ORDERS that all official public records in this matter and all records relating to the defendant's arrest, indictment or information, trial, finding of guilt, and discharge from probation and dismissal of proceedings be expunged from all official records to the extent required by District of Columbia Code 1981, § 33-541(e)(2).

October 12, 1989 /s/ Mildred M. Edwards
Date Judge

D.C. Code 1981, § 33-541(e)(2):

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained under paragraph (1) of this subsection) all recordation relating to his or her arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this subsection. If the court determines, after hearing, that such person was dismissed and the proceedings against him or her discharged, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of this law, to the status he or she occupied before such arrest or

indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge such arrest, or indictment, or trial in response to any inquiry made of him or her for any purpose.